

## **Text Article 9 draft revised Implementing Regulation**

In the context of the ongoing review of EU merger control rules aimed at further simplifying and streamlining merger procedures at EU level (“Merger control in the EU – further simplification of procedures”), following the consultation on the draft revised Merger Implementing Regulation (“Implementing Regulation”) and Notice on Simplified Procedure that took place in May 2022, the European Commission has today launched an additional targeted public consultation on a proposed modification to Article 9 of the Implementing Regulation.

This article provides for the suspension of time limits under certain circumstances and details the circumstances under which the suspension ends. The proposed amendment aims to clarify that the Commission has the possibility to restart the clock *ex officio* where the information requested is no longer necessary.

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### ***Article 9 Suspension of time limit***

- (1) The time limits referred to in Article 9(4) and Article 10(1) and (3) of Regulation (EC) No 139/2004 shall be suspended where the Commission has to take a decision pursuant to Article 11(3) or Article 13(4) of that Regulation, on any of the following grounds:
  - (a) information which the Commission has requested pursuant to Article 11(2) of Regulation (EC) No 139/2004 from one of the notifying parties or any other involved party, as defined in Article 11 of this Regulation, is not provided or not provided in full within the time limit fixed by the Commission;
  - (b) information which the Commission has requested pursuant to Article 11(2) of Regulation (EC) No 139/2004 from a third party is not provided or not provided in full within the time limit fixed by the Commission owing to circumstances for which one of the notifying parties or any other involved party, as defined in Article 11 of this Regulation, is responsible;
  - (c) one of the notifying parties or any other involved party, as defined in Article 11 of this Regulation, has refused to submit to an inspection deemed necessary by the Commission on the basis of Article 13(1) of Regulation (EC) No 139/2004 or to cooperate in the carrying out of such an inspection in accordance with Article 13(2) of that Regulation;
  - (d) the notifying parties have failed to inform the Commission of material changes in the facts contained in the notification, or of any new information of the kind referred to in Article 5(3) of this Regulation.
- (2) The time limits referred to in Article 9(4), Article 10(1) and (3) of Regulation (EC) No 139/2004 shall be suspended where the Commission has to take a decision pursuant to Article 11(3) of that Regulation, without proceeding first by way of simple request for information, owing to circumstances for which one of the undertakings involved in the concentration is responsible.

- (3) The time limits referred to in Article 9(4), Article 10(1) and (3) of Regulation (EC) No 139/2004 shall be suspended:
  - (a) in the cases referred to in paragraph 1, points (a) and (b), for the period between the expiry of the time limit set in the simple request for information, and the receipt of the complete and correct information required by decision or the moment when the Commission informs the notifying parties that, in light of the results of its ongoing investigation or market developments, the information requested is no longer necessary;
  - (b) in the cases referred to in paragraph 1, point (c), for the period between the unsuccessful attempt to carry out the inspection and the completion of the inspection ordered by decision or the moment when the Commission informs the notifying parties that, in light of the results of its ongoing investigation or market developments, the inspection ordered is no longer necessary;
  - (c) in the cases referred to in paragraph 1, point (d), for the period between the occurrence of the change in the facts referred to therein and the receipt of the complete and correct information;
  - (d) in the cases referred to in paragraph 2 for the period between the expiry of the time limit set in the decision and the receipt of the complete and correct information required by decision or the moment when the Commission informs the notifying parties that, in light of the results of its ongoing investigation or market developments, the information requested is no longer necessary.
- (4) The suspension of the time limit shall begin on the working day following the day on which the event causing the suspension occurred. It shall expire at the end of the day on which the reason for suspension is removed. Where such a day is not a working day, the suspension of the time-limit shall expire at the end of the following working day.
- (5) The Commission shall process within a reasonable time period all the data it has received in the framework of its investigation that could allow it to deem that information requested or an inspection ordered is no longer necessary, within the meaning of paragraph 3, points (a), (b), and (d).